



30 SEP 2003

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In re Application of:	:	
French et al.	:	
Application No.: 09/914,176	:	DECISION
PCT No.: PCT/GB00/00740	:	
Int. Filing Date: 01 March 2000	:	ON
Priority Date: 02 March 1999	:	
Atty. Docket No.: 78104.028	:	PETITION
For: Identification Of Bacteria By	:	
Amplification And Probing	:	

This is in response to the "Petition To Revive" filed on 03 December 2002.

BACKGROUND

This international application was filed on 01 March 2000, claimed an earlier priority date of 02 March 1999, and designated the United States. A demand electing the United States was filed prior to the elapse of 19 months from the priority date. The International Bureau transmitted a copy of the published international application to the USPTO on 08 September 2000. Accordingly, the 30 month period to pay the basic national fee in the United States expired as of midnight on 02 September 2001. On 24 August 2001, applicants filed inter alia the basic national fee.

On 22 October 2001, a Notification Of Missing Requirements (Form PCT/DO/EO/905) was mailed to counsel, requiring the submission of an executed oath or declaration of the inventors, an initial or substitute computer readable form (CRF) of the "sequence listing," an initial or substitute paper copy or compact disc of the "sequence listing" (and an amendment directing its entry into the application), and a statement that the contents of the paper copy or compact disc and the CRF are the same and, where applicable, include no new matter, as required by 37 CFR 1.821(e), 1.821(f), 1.821(g) 1.825(b) or 1.825(d).

On 21 November 2002, a Notification Of Abandonment (Form PCT/DO/EO/909) was mailed to counsel, indicating that this international application had become abandoned with respect to the national stage in the United States for failure to timely reply to the Notification Of Missing Requirements.

DISCUSSION

Petitioner requests that the Notification of Abandonment be withdrawn because “Applicants responded completely and in a timely fashion to the Notification of Missing Requirements dated October 22, 2001.” The petition is accompanied by a “true and complete copy of Applicants’ response.” Counsel notes that “a self-addressed return receipt postcard accompanied Applicants’ response. As of the date of this petition, the postcard has not been received by Applicants’ counsel. Applicants’ undersigned counsel has also reviewed his financial records and as of the date of this petition, check No. 005415 has not been paid. Thus, it appears that the Office never received Applicant’s response.”

37 CFR 1.8 (b) provides that

In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the Patent and Trademark Office, and the application is held to be abandoned or the proceeding is dismissed, terminated or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

- (1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;
- (2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and
- (3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Commissioner to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit’s report confirming transmission may be used to support this statement.

The instant petition satisfies requirements (1) and (2). With regard to requirement (3), the petition includes a statement that “said response was, in fact, filed on November 13, 2001.” This statement is insufficient to satisfy requirement (3) because it does not specifically attest to the issue of whether the correspondence was in fact timely mailed. Counsel is required to provide a statement by a person(s) having first-hand knowledge of the alleged mailing of the correspondence per 37 CFR 1.8(b)(3). In the absence of such a statement, it would not be appropriate to grant the requested relief.

CONCLUSION

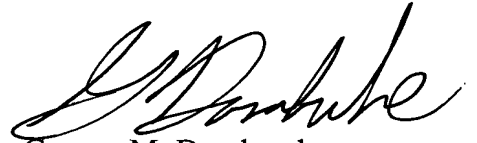
The petition is **DISMISSED**, without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision.

Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, Mail Stop PCT, Alexandria, VA 22313-1450, with the contents of the letter marked to the attention of the PCT Legal Office.



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